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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

In re:

**WESTERN UTAH COPPER COMPANY,
et al.,**

Debtors and Debtors in Possession.

Bankruptcy Case No. 10-29159 WTT
Chapter 11
(Jointly Administered with
Case No. 10-30002 WTT)

Filed via ECF

**LIMITED OBJECTION OF SECURED CREDITORS TO DEBTORS' MOTION FOR
AUTHORITY TO OBTAIN FINANCING ON A SENIOR SECURED BASIS
PURSUANT TO COURT-APPROVED SETTLEMENT AGREEMENT**

The Secured Creditors,¹ through counsel object, in part, to the *Debtors' Motion for Authority to Obtain Financing on a Senior Secured Basis Pursuant to Court-Approved Settlement Agreement* [[Doc. # 587](#)] (the “**Financing Motion**”) for the reasons set forth herein.

¹ The “**First Lien Lenders**” are DDB Utah, LC; the Raymond W. Schmelzer Marital Trust; Top-Notch Investments, LLC; Rodney Evan Schmelzer; Brent Thomas Bingham; Bridge Loan Capital Fund, LP; DPI College, LC; Milford Copper Investors II, LLC; Reynolds Brothers, Inc.; and Milford Investors, LLC

1. The Secured Creditors *do not* object to the Debtors' request for approval of the "Interim Approval Amount" of \$93,357.63 to enable the Debtors to pay the expenses itemized in subparagraphs (a) through (e) on page 3 of the Financing Motion.

2. With respect to the balance of the \$200,000 loan request, in the amount of approximately \$106,700.00, however, the Debtors' proposed budget lacks sufficient detail to enable the Secured Creditors to determine whether those proposed expenditures satisfy the terms and conditions of the Settlement Agreement. For example, the budget proposes gross expenditures for "geologic (\$20,000)"; "Expenses (\$20,000)"; "Tetra Tech (\$5,000)"; "Utility (\$26,000)²"; and "Contingency (\$10,400)³" with no backup, explanation or detail regarding the same. In addition, the proposed payroll expenditure of \$42,000 seems excessive for a non-operating mill.

3. A representative of the Secured Creditors has met with the Debtors' representative and was assured that additional detail would be provided to the Secured Creditors before the Debtors requested additional funds from the Secured Creditors beyond those necessary to pay the proposed emergency expenditures. Based on these discussions, the Secured Creditors understood that they would have a further opportunity to review and approve any additional requests before they were required to advance any more money under the terms of the Settlement Agreement.

4. The Settlement Agreement requires that the budget be "acceptable to the Secured Creditors." The budget attached to the Financing Motion is not acceptable.

5. The Settlement Agreement contemplates that the budget will provide for "lease extensions, minimal, mothballed type collateral preservation and minimal administrative expenses, excluding compensation to McMullin, Southworth, Bryan and "insiders." It is

² Some or all of this proposed expenditure might be justified with more back-up, but, with warmer weather, and a "mothballed" mill, one would expect the expenditure to be less than in prior months.

³ It is hard to imagine how the expenditures for geologic, Tetra Tech and Contingency preserve the assets, when there is no ongoing mining or milling operations, but the Secured Creditors are willing to keep an open mind and wait for more backup and a detailed explanation.

impossible to determine from the budget attached to the Financing Motion whether the proposed budget complies with these requirements.

6. Paragraph 6 of the Settlement Agreement requires an accounting. No such accounting has yet been provided. As condition of any further expenditure, the Debtors should be required to at least account for all sources and uses of funds to date. The last monthly operating report for the Debtors was filed in *November 2010*.

7. Funding for the budget was to be obtained from a variety of sources. The funding sources are identified in paragraph 12 of the Settlement Agreement as follows: (i) unexpended, court approved interim debtor-in-possession loan proceeds, (ii) insurance premium refunds, (iii) sales of magnetite, copper concentrate or surplus equipment *and* (iv) an additional advance of up to \$200,000 (the “**Secured DIP Loan**”) from the Secured Creditors, or some of them.” (emphasis added). The Debtors have not accounted for any of these other sources.

8. Accordingly, the Secured Creditors object to the Debtors’ proposed budget, on the grounds that it lacks specificity and does not comply with the Settlement Agreement. The Secured Creditors request that any Order entered by the Court that authorizes the Debtors to borrow additional funds from the Secured Creditors, beyond the emergency expenses itemized in the Financing Motion, require an up to date accounting from the Debtors, a further detailed explanation of any additional proposed expenditures and either the written consent of the Secured Creditors’ representative to such additional expenditures, or a further order of the Court after appropriate notice and a hearing.

DATED: March 9, 2011.

SNELL & WILMER, L.L.P.

/s/ David E. Leta
David E. Leta

CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2011, I caused a true and correct copy of the foregoing to be served via email, upon the following:

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